IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

WEALTH TAX REFERENCE No 33 of 1989
with
WEALTH TAX REFERENCE No 62 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? :

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COMMISSIONER OF WEALTH-TAX

Versus

M.B.PATEL PUBLIC CHARITY TRUST

Appearance:
1. WEALTH TAX REFERENCE No. 33 of 1989
MR DD VYAS for Petitioner No. 1
SERVED BY RPAD - (N) for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE K.A.PUJ

Date of decision: 11/07/2002

COMMON ORAL JUDGEMENT

(Per : MR.JUSTICE K.A.PUJ)

Since common issue arises in both these references, the same are being disposed of by this common judgment.

2. At the instance of the revenue, the following question of law is referred for the opinion of this Court for assessment year 1978-79:-

"Whether, on the facts and in the circumstances of the case and in law, the Tribunal is right in coming to the conclusion that the assessee is entitled to exemption u/s.5 (1)(xxiii) of the W.T. Act, 1957?"

3. Similarly, at the instance of the revenue, the following question of law is referred for the opinion of this Court in respect of assessment years 1980-81, 1981-82 and 1982-83.

"Whether, on the facts and in the circumstances of the case and in law, the Tribunal is right in coming to the conclusion that the assessee is entitled to exemption u/s.5 (1)(xxiii) of the W.T. Act, 1957?"

4. As far as the assessment year 1978-79 is concerned, while drawing the statement of case, the Tribunal has observed that the assessee is holding shares in Indian companies and claimed exemption under Section 5 (1)(xxiii) of the Wealth-tax Act, 1957 in respect of those shares. The Wealth-tax Officer while framing the assessment has taken the view that Section 21A was applicable to the assessee's case and on that ground the assessee's claim was rejected. The assessee filed an appeal before the Appellate Assistant Commissioner and the Appellate Assistant Commissioner having relied on his own order for the assessment year 1979-80 as well as the decision of the Tribunal, Hyderabad Bench in the case of J.E. Chenoy Charitable Trust, has taken the view that there the assessee's status was taken as an individual and here it is a trust and on that ground the appeal filed by the assessee was dismissed.

Being aggrieved by the said order of the Appellate Assistant Commissioner, the assessee filed second appeal before the Tribunal and the Tribunal has taken the view that as per the decision in the case of J.E. Chenoy Charitable Trust, the exemption under Section 5(1)(xxiii) is available to the assessee. However, in the assessee's own case for subsequent year

since the exemption was granted to the assessee, for the sake of maintaining consistency, the Tribunal has held that the assessee was entitled to exemption under Section 5(1)(xxiii) and on that ground the assessee's claim was allowed by the Tribunal.

In the above premises and being aggrieved by the order of the Tribunal, the revenue filed this reference before this Court and the above question was referred.

5. Similar facts are there on record for the assessment years 1980-81, 1981-82 an 1982-83 which are the subject matter of Wealth-tax Reference No.62 of 1990.

6. Heard Mr DD Vyas, learned Sr. Standing Counsel for the revenue. Nobody appears on behalf of the respondent - assessee though notice is duly served.

7. At the hearing of these References, Mr Vyas has invited our attention to the provisions contained in Section 21A of the Act for the relevant year which are as under:-

> 21A : Notwithstanding anything contained in clause (i) of sub-section (1) of section 5, where any property is held under trust for any public purpose of a charitable or religious nature in India and-
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> (i) any part of such property or any income of such trust whether derived from such property or from voluntary contributions referred to in sub-clause (iia) of clause (24) of section 2 of the Income-tax Act is used or applied, or
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> (ii) any part of the income of the trust whether derived from such property or from voluntary contributions referred to in sub-clause (iia) of clause (24) of section 2 of the Income-tax Act, being a trust created on or after the 1st day of April, 1962, enures,
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> directly or indirectly, for the benefit of any person referred to in sub-section (3) of section 13 of the Income-tax Act, wealth-tax shall be leviable upon and recoverable from the trustee or manager (by whatever name called) in the like manner and to the same extent as if the property were held by an individual who is a citizen of

India and resident in India for the purposes of this Act and-

(a) at the rates specified in Part I of Schedule I in the case of an individual; or

(b) at the rate of one and one-half per cent,

whichever course is more beneficial to the revenue.

Provided that ....

Provided further that ....

8. On the basis of the provisions contained in the above section, it was urged by Mr Vyas that exemption under Section 5 (1)(xxiii) is not available to the assessee and it is made clear in the said section that wealth-tax shall be leviable upon, and recoverable from, the trustee or manager (by whatever name called) in the like manner and to the same extent as if the property were held by an individual who is a citizen of India and resident in India for the purposes of this Act but without excluding the value of any asset under sub-section (1) of section 5 and at the maximum marginal rate. Subclause (xxiii) also falls under the exemption clause contained in Section 5(1) of the Wealth-tax Act and the said exemption is not available to the assessee. Mr Vyas has further submitted that though the Tribunal has considered the provisions contained in Section 21A of the Act and thereafter the Tribunal has come to the conclusion that exemption is not available to the assessee, the assessee's appeal was allowed only with a view to maintain consistency as the said claim was allowed by the Tribunal for subsequent assessment year.

9. We have considered the arguments advanced by Mr Vyas and have also gone through the order passed by the Tribunal.

10. It appears that the Tribunal has not considered the provisions of Section 21A of the Act as it stood at the relevant time. The Tribunal has quoted the following portion from Section 21A of the Act:-

"21A: Notwithstanding anything contained in clause (i) of sub-section (1) of Section 5, where any property is held under trust for any public

purpose of a charitable or religious nature in India and -

Wealth tax shall be leviable upon, and recoverable from, the trustee or manager (by whatever name called) in the like manner and the same extent as if the property were held by an individual who is a citizen of India and resident in India for the purposes of this Act, but without excluding the value of any asset under sub-section (1) of Section 5, and at the maximum marginal rate".

(Emphasis supplied)

11. On the basis of the above provisions, the Tribunal has observed that the exemption under clause (xxiii) is also excluded and not that exemption clause (i) only is excluded. As a matter of fact, these words, "..... but without excluding the value of any asset under sub-section (1) of Section 5, and at the maximum marginal rate", were not there in Section 21A of the Act, as it existed at the relevant time. We are, therefore, of the view that these words cannot be pressed into service for the purpose of denying tax exemption under clause 5(1) (xxiii) of the Act, to the assessee.

12. We further make it clear that the Tribunal has followed its order for subsequent year against which no reference was preferred by the revenue before this Court on the ground that the tax amount was very low. In spite of the position being same so far as the present references are concerned, the revenue has filed these references before this Court. We may decline to answer the question referred to us on this short point.

13. It is also worthwhile to note here that the subsequent portion contained in Section 21A i.e. "but without ..... at the maximum marginal rate" introduced later on was omitted by the Finance Act, 1992 w.e.f. 1-4-1993.

Taking overall view of the matter and considering the fact that no reference was filed by the revenue against the order of the Tribunal for subsequent year, we are of the view that the Tribunal has not committed any error in holding that the assessee is entitled to exemption under section 5 (1)(xxiii) of the Act.

We, therefore, answer the question referred to us in both these references in the affirmative i.e. in favour of the assessee and against the revenue.

14. Both the references are accordingly disposed of with no order as to costs.

(M.S. Shah,J) (K.A. Puj,J)

zgs/-